



Oklahoma Office of Workforce Development
900 N. Portland Ave.
Oklahoma City, OK 73107

MEMORANDUM - #M-07-2018

DATE: June 22, 2018

TO: Chief Local Elected Officials
Workforce Development Board Chairs
Workforce Development Board Staff
Local Equal Opportunity Officers
WIOA Core Partners

FROM: Dr. Erin E. Risley-Baird, Executive Director

RE: Title I System Guidance for Equal Opportunity Officers Reporting Structure and Conflict of Interest Provisions

Based on recent guidance received from the U.S. Department of Labor Center for Civil Rights (CRC), the Oklahoma Office of Workforce Development (OOWD) is issuing this memo to clarify the appointment of local area equal opportunity (EO) officers. *Effective immediately*, Local Workforce Development Boards (LWDBs) must designate a local area EO officer that has direct reporting access to individuals in authority, including the Executive Director, the Chief Local Elected Official, and LWDB Chair.¹ However, that individual cannot also be the Executive Director, the Chair, or the CLEO of the organization.

The regulations implementing WIOA Section 188 set forth specific requirements for designating a recipient-level Equal Opportunity (EO) Officer. They state:

(b) *All recipients.* Every recipient . . . must designate a recipient-level Equal Opportunity Officer (recipient-level EO Officer), who reports directly to the individual in the highest-level position of authority for the entity that is the recipient, such as the Governor, the Administrator of the State Department of Employment Services, the Chair of the Local Workforce Development Board, the Chief Executive Officer, the Chief Operating Officer, or an equivalent official. (29 C.F.R. § 38.28(b).)

¹ OWDI # 03-2018 WIOA Roles and Responsibilities, states the "Local Equal Opportunity Officer must have direct access to both the Chief Local Elected Official and the Chair of the LWDB. This ensures LWDBs are informed and updated regularly on its equal opportunity and nondiscrimination duties."



*The Oklahoma Office of Workforce Development/Oklahoma Works is an equal opportunity employer/program.
Auxiliary aids and services are available upon request to individuals with disabilities.*

Additionally, the provisions provided at 29 C.F.R. § 38.29 delineate the recipient's obligations with regard to its EO Officer as a separate individual from the Executive Director. The provisions state the individual must be a "senior-level employee reporting directly to the individual in the highest position of authority" (e.g., *Chief Local Elected Official, LWDB Chair, and/or Executive Director*) for the recipient, and the individual "can fulfill the responsibilities of an EO Officer as described in 29 C.F.R. § 38.31."

Distinguishing the LWDB's Executive Director from the EO Officer promotes the independence and objectivity to fulfill necessary duties and to prevent an actual or apparent conflict of interest.

Per 29 C.F.R. § 38.30, the EO Officer "must not have other responsibilities or activities that create a conflict or the appearance of a conflict with the responsibilities of an EO Officer." This is consistent with the conflict of interest guidance provided in OWDI 23-2017, which states:

No individual in a decision-making capacity shall engage in any activity if a conflict of interest (real, implied, apparent, or potential) is involved. This includes decisions involving the selection, award, or administration of a sub grant or contract supported by Workforce Innovation and Opportunity Act (WIOA) or any other federal funds.

Moreover, the Department of Labor's Civil Rights Center (CRC) defines "conflict of interest" as:²

A conflict of interest exists when an obligation or duty to the public could be compromised by self-interest, a prior commitment, competing loyalties, or an inability to be objective.

CRC further states:

A conflict of interest also exists when a person, such as a public official, has an interest sufficient to influence or appear to influence, the objective exercise of his or her official duties. This interest may be personal in nature or may result from divergent professional responsibilities.

The CRC concludes that a conflict of interest exists when an official responsible for executing and advising on personnel actions is also responsible for managing, advising, or overseeing the EO complaint process. This is because (1) EO complaints often challenge the motivation and impact of personnel actions and decisions; and (2) in order to maintain the integrity of the EO investigative and decision making processes, the EO functions must be kept separate from the personnel function. Because the highest level official in the organization usually makes the final personnel decisions, it would be an actual or apparent conflict of interest for that individual to also serve as the EO Officer.

For WIOA programs and activities to function fairly and effectively, EO Officers must not be placed in a position where they have to make a choice – conscious or unconscious – between their responsibility for EO compliance and their other interests, whether these interests are personal in nature or related to their other organizational duties. As such, designated EO

² See <https://www.dol.gov/oasam/programs/crc/MOAELEMENT1.htm> and <https://www.dol.gov/oasam/programs/crc/conflicts-of-interest.htm>.

Officers should *report to* the highest level officials in the organization, which is consistent with OWDI # 03-2018 WIOA Roles and Responsibilities.

Please note, newly designated Local EO Officers “...must be a senior level employee of the recipient who has the knowledge, skills and abilities necessary to fulfill the responsibilities competently....” In order to ensure all new Local EO Officers and the EO Officer’s staff receives the appropriate training, the State EO Officer, Lindsey Workman Gilbert, will provide one-on-one technical assistance to each new Local EO Officer. (29 C.F.R. § 38.29). Please send all technical assistance requests to lindsey.workman@okstate.edu.

Please distribute this memo to appropriate staff.